

1984 WL 249966 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 27, 1984

*1 Gary D. Brown, Esquire
Attorney at Law
Post Office Box 418
Ridgeland, South Carolina 29936

Dear Mr. Brown:

Attorney General Medlock has referred your letter of August 7, 1984, to me for response. You have inquired about an individual who was indicted and convicted of conspiracy and extortion in federal court, whose case is presently on appeal to the Fourth Circuit. You further state that you believe the offenses are misdemeanors. You have asked for an opinion as to whether the individual can (1) vote and (2) hold an office as either a deputy sheriff or some similar position.

At the request of James B. Ellisor, Executive Director of the South Carolina Election Commission, this Office has researched similar questions on the same individual's convictions. A copy of the opinion of August 3, 1984, to Mr. Ellisor is enclosed. As you will see in the opinion, we would agree that extortion and conspiracy would be misdemeanor offenses under state law, but the same offenses under federal law are felonies. Citing the majority, or 'felony anywhere,' rule, we concluded that convictions of felony offenses in federal court would probably preclude a person from being qualified to vote in this State. You will also see that our conclusion is not free from doubt and that we suggested that a declaratory judgment be sought to clarify the matter, especially since the right to vote is a fundamental right. Once again, we would urge that a declaratory judgment be sought to protect the individual and prevent disenfranchisement needlessly, since our Supreme Court has not yet decided the question you have asked.

As to the individual being able to serve as a deputy sheriff or in a similar law enforcement capacity, we must advise that no state law prohibits a law enforcement officer convicted of the offenses of extortion or conspiracy from being re-employed in a law enforcement capacity. If he were being employed initially, or if one year lapses between leaving one position and beginning another, the individual would be required to meet the qualifications specified by [Section 23-23-50\(B\)\(4\)\(d\), Code of Laws of South Carolina \(1983 Cum. Supp.\)](#), which specifies that a 'candidate's fingerprint record as received from F.B.I. and S.L.E.D. indicates no record of felony convictions,' to be qualified to attend the Criminal Justice Academy for the required training. It would appear from [Section 23-31-140 of the Code](#) that the individual would not be precluded from carrying a weapon. From a state law perspective, there is apparently no prohibition against the individual holding another law enforcement position. It would be advisable to determine whether a potential employer (a county or municipality) might have a policy precluding his employment.

You also mentioned that the individual's convictions are on appeal to the Fourth Circuit. Retired Attorney General Dan McLeod addressed the effect of an appeal upon disqualification from voting by Opinion No. 1940, dated November 8, 1965, a copy of which is enclosed. He concluded that disqualification would not be stayed by an appeal.

*2 I hope that this letter and the enclosed opinions satisfactorily resolve your questions. Again, it must be urged that a declaratory judgment would be appropriate to determine whether the 'felony anywhere' rule would be applicable, since our opinion is not free from doubt and the courts of this State have not yet given us guidance. The right to vote is fundamental, and disenfranchisement and the consequences thereof cannot be taken lightly. Please advise if you need additional assistance or clarification.

With kindest regards, I am
Sincerely yours,

Patricia D. Petway
Assistant Attorney General

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